

EEOC Provides Guidance Regarding COVID-19 Vaccinations

Article By:

Michael Reed

Ryan M. Bates

Susan F. Wiltsie

On December 16, 2020, the Equal Employment Opportunity Commission (EEOC) updated its COVID-19 guidance with a new section pertaining to vaccinations.

The updated release—[“What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws”](#)—discusses how employers who require vaccinations should respond to an employee who is unable or unwilling to receive a COVID-19 vaccination because of a disability or sincerely held religious belief.

With regard to a disability-based refusal, the guidance strongly insinuates that a vaccination requirement is “safety-based qualification standard” that tends to screen out disabled employees. As a result, an employer cannot bar an unvaccinated employee from the workplace, or take any other adverse employment action, unless it can show that the employee would pose a direct threat—*i.e.*, a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.” According to the EEOC, the analysis must be “an individualized assessment of four factors in determining whether a direct threat exists: the duration of the risk; the nature and severity of the potential harm; the likelihood that the potential harm will occur; and the imminence of the potential harm.” If the direct threat “cannot be reduced to an acceptable level,” then the employer must consider possible accommodations for the employee who cannot be vaccinated, such as remote working.

With regard to religious-based refusals, once an employer is on notice that an employee’s sincerely held religious belief or practice prevents the employee from receiving the vaccination, the employer must provide a reasonable accommodation for the religious belief or practice unless it would pose an undue hardship. The Commission stresses that employers “should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely held religious belief,” but recognizes that an employer is justified in requesting information from the employee if it has an “objective basis for questioning” the sincerity of the particular religious belief.

A couple of other noteworthy takeaways from the updated guidance:

- Actual administration of the vaccine, if conducted by the employer, is not a “medical examination” for purposes of the ADA.
- If an employer (or a third party contracted by the employer) administers a vaccine, the CDC-recommended pre-screening questions are subject to the ADA’s standards for disability-related inquiries.
- Requiring an employee to show proof of a COVID-19 vaccination does not qualify as a disability-related inquiry under the ADA.

The EEOC notes that while the EEO laws “continue to apply during the time of the COVID-19 pandemic ... they do not interfere with or prevent employers from following the guidelines and suggestions made by the CDC or state/local public health authorities about steps employers should take regarding COVID-19.”

Employers who are instituting, or considering instituting, a mandatory vaccination policy should consult with counsel to ensure that they do not run afoul of various employment laws.

Copyright © 2025, Hunton Andrews Kurth LLP. All Rights Reserved.

National Law Review, Volume X, Number 356

Source URL: <https://natlawreview.com/article/eeoc-provides-guidance-regarding-covid-19-vaccinations>